

EXAMINER'S AMENDMENT TO SPECIFICATION

An examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the Issue Fee.

AMENDMENTS

IN THE SPECIFICATION

Page 1, following the title, please insert the following:

-- This application is a 371 of PCT/US2003/030032 filed on September 26, 2003, which is hereby incorporated by reference. --

Page 35, line 9, please insert -- This application claims priority to U.S. provisional application 60/413,773 filed September 27, 2002, the entirety of which is hereby incorporated by reference. --

The **above preliminary amendment of March 23, 2005 has been changed** to the following:

AMENDMENT TO SPECIFICATION

Page 1, following the title insert the following:

---- This application is a 371 of PCT/US2003/030032 filed on September 26, 2003, which is hereby incorporated by reference. This application claims priority to U.S. provisional application 60/413,773 filed September 27, 2002, the entirety of which is hereby incorporated by reference. ---

Authorization for this examiner's amendment was given in a telephone interview with Attorney Steven P. O'Connor on September 14, 2009.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HERBERT J. LILLING whose telephone number is 571-272-0918. The examiner can normally be reached on WORK AT HOME MAXIFLEX.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JON WEBER can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

H.J.Lilling: HJL

(571) 272-0918

Art Unit **1657**

October 26, 2009

/HERBERT J LILLING/
Primary Examiner, Art Unit 1657

REASONS FOR ALLOWANCE

The following is an Examiner's Statement of Reasons for Allowance:

Any comments considered necessary by applicant must be submitted no later than the Payment of the Issue Fee and, to avoid processing delays, should preferably accompany the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on September 14, 2009 has been entered.

The references of record do not anticipate the claimed inventions. In addition, the references alone or further in view of each other do not suggest or motivate one of ordinary skilled in the art to add an antibiotic to the culture medium prior to the medium is solidified. A careful examination of the newly submitted art as well as the arguments submitted in the opposition proceedings in the European Patent Office papers now of record in the instant case. The claimed subject matter in this instant application pertains to new claim(s) drawn to a process step **which requires the addition of an antibiotic to be added to the culture medium prior to solidification of the medium** whereas all of the prior art lacks this specific unexpected step as demonstrated by the Example 2 in the application. The claims in the European Patent

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Office are not directed to the same process as well as the product-by-process for the culture medium.

Thus, the instantly claimed processes are allowed over the prior art references.

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Primary Examiner Group 1600 Art Unit 1657